IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.21/2003

1.Dattaram Vithal Naik,
Ghotali No.1, Keri,
Sattari, Goa (deceased),
through his legal representatives:

A) Rukjmini Dattaram Naik,
Ghotali No.1, Keri, Sattari, Goa.

B) Shrikant Dattaram Naik,
Ghotali No.1, Keri, Sattari, Goa.

C) Vanitha Shrikant Naik,
Ghotali No.1, Keri, Sattari, Goa.

D) Tulshidas Dattaram Naik,
Ghotali No.1, Keri, Sattari, Goa.

E) Ashwin Tulshidas Naik,
Ghotali No.1, Keri, Sattari, Goa.

F) Narayan Dattaram Naik,
Ghotali No.1, Keri,
Sattari, Goa.

G) Namrata Narayan Naik,
Ghotali No.1, Keri, Sattari, Goa.

H) Shoba Dattaram Naik,
Murdi Vada, Narve,
Bicholim, Goa.

I) Sharmila Dattaram Naik,
Ghotali No.2, Keri, Sattari, Goa.

J) Shripad Pandurang Gawas,
Ghotali No.2, Keri,
Sattari, Goa.

2. Rukmini Dattaram Naik,
Ghotali No.1, Keri, Sattari, Goa. .... Appellants.

Vs.

1. Vassudeo Vithal Naik,
(deceased) through his
legal representatives.

A) Devaki Vassudeo Naik,
Ghotali No.1, H.No.159,
Keri, Sattari, Goa.

B) Keshari Vassudeo Naik,
Murdi Wada, Narva,
Bicholim, Goa.

C) Pandurang Tukaram Naik,
Murdi Wada, Narva, Bicholim, Goa.

D) Prakash Vassudeo Naik,
Ghotali No.1, H.No. 160,
Keri, Sattari, Goa.

E) Pratima Prakash Naik,
Ghotali No.1, H.No.160,
Keri, Sattari, Goa.

F) Chaya Vassudeo Naik,
Sanquelim, Vithalapur, Goa.

G) Raghuvir Kashinath Naik,
Sanquelim, Vithalapur, Goa.

H) Mukund Vasudeo Naik,
Ghotali No.1, Keri, Sattari, Goa.

2. Devaki Vassudeo Naik,
Ghotali No.1, Keri, Sattari, Goa.

3. Suresh Naik,
Murdi Vada, Narve,
Bicholim, Goa. ..... Respondents.

Shri Amrut Kansar, Advocate for the appellants.

Shri J.E. Coelho Pereira, Sr. Advocate with Mr. J. Godinho, Advocate for respondents No.1A, to 1C.

CORAM : F.I. REBELLO, J.

DATE : JULY 25, 2003.

ORAL JUDGMENT :

Admit. It will be open to the parties to take steps before the trial Court for bringing on record the LRs. of the deceased who apparently expired between

passing of the Decree and the appeal preferred before this Court, considering the order to be passed.

2. The suit was a suit for partition. The trial Court dismissed the suit against which an appeal was preferred being Regular Civil Appeal No.67/95. The appeal was allowed. The case of the appellant in the suit was that he had 50 % of the share in the suit properties. Consequently, when the appeal was allowed what the learned appellate Court has really done is to hold that the appellants before it, have half share in the suit properties. Once that be the case, the suit could not have been disposed of. At the highest, the learned first appellate Court could have passed a preliminary decree and, thereafter, directed the matter to proceed according to law.

3. Heard parties. In the light of what is stated hereinabove, the Judgment and Order dated 21.6.2002 to be treated as a preliminary decree. The trial Court to proceed according to law, based on what is aforesaid. Second Appeal is, accordingly, allowed. The matter is remanded to the trial Court for further proceedings. There shall be no order as to costs.

F.I. REBELLO, J.